

REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of September 28, 2007 (Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. However, the Office is expressly authorized to charge any deficiencies or credit any overpayments to Deposit Account No. 50-0951.

In the Office Action, Claims 1-5, 7, 8, 10, 11-18, 20, 21, and 23 were rejected under 35 U.S.C. § 112, second paragraph. Claims 1-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,006,197 to d'Eon, *et al.*, (hereafter d'Eon), in view of applicant-admitted prior art (AAPA) or U.S. Patent 6,816,903 to Rakoshitz, *et al.* (hereinafter Rakoshitz), and further in view of newly-cited U.S. Patent 7,185,353 to Schlack (hereinafter Schlack). Claims 1-5, 7, 8, 10-18, 20, 21, and 23 were rejected under 103(a) as being unpatentable over non-patent literature "Web Marketing through Oracle iMarketing" by Bellare (Oracle iMarketing), in view of Rakoshitz and Schlack.

Although Applicants respectfully disagree with the rejections, Applicants nevertheless have amended each of the independent claims so as to expedite prosecution of the present application by emphasizing certain aspects of the invention. Applicants respectfully note, however, that the amendments are not intended as, and should not be interpreted as, the surrender of any subject matter. Accordingly, Applicants respectfully reserve the right to present the original version of any of the amended claims in any future divisional or continuation applications from the present application.

The claim amendments, as discussed herein, are fully supported throughout the Specification. No new matter has been introduced by virtue of any of the claim amendments.

Certain Aspects Of Applicants' Invention

It may be useful to reiterate certain aspects of the invention prior to addressing the cited references. One embodiment of the invention, typified by amended Claim 1, is a method of eliciting a response that can include identifying the available capacity of a network.

The network, more particularly, can be a combined packet-switched and circuit-switched network for transmitting electronic content for an electronic campaign and receiving consumer responses to the transmitted electronic content. (*See, e.g.*, Specification, p. 7, lines 1-6.) The network can comprise a plurality of distinct delivery channels. (*See, e.g.*, Specification, p. 7, lines 14-16, and p. 8, lines 3-23.)

The different delivery channels can include one or more private network channels for communicating with a private network device such as via electronic mail. (*See, e.g.*, Specification, p. 8, lines 5-8.) Such a device can be a computing device, such as a pager, a device personal digital assistant, or Internet-access device. (*See, e.g.*, Specification, p. 8, lines 5-8.) The different delivery channels also can include at least one telephonic channel for communicating with telephonic devices. (*See, e.g.*, Specification, p. 7, lines 23-38.) The different delivery channels can further include at least one public network channel for communicating with a public Web site, an appliance interface, and a programmable marquee. (*See, e.g.*, Specification, p. 8, lines 9-13.) The interface can be used, for example, to visually and/or audibly present advertisements at a vending machine, gas pump, or programmable billboard. (*See, e.g.*, Specification, p. 8, lines 9-13.)

The method also can include transmitting electronic content over the network according to a predetermined outbound transmission flow rate for the electronic campaign. Additionally, the method can include concurrently determining the effectiveness of the electronic campaign by analyzing consumer responses to the

transmitted electronic content, wherein the transmitted electronic content is transmitted over the plurality of delivery channels.

The method can further include analyzing received consumer responses associated with each of the plurality of delivery channels used to transmit the electronic content, and, based upon the received consumer responses analyzed, determining which of the plurality of delivery channels is more effective than each of the other of the plurality of delivery channels. Accordingly, the method can further include selectively redirecting at least a portion of the electronic content from other of the plurality of delivery channels to the delivery channel determined to be more effective. The method also can include dynamically modifying the outbound transmission flow rate for the electronic campaign according to the determined effectiveness of the electronic campaign and the identified available network capacity.

35 U.S.C. § 112, second paragraph

As amended, Claims 1 and 14 expressly recite the precise relationship between the network and the plurality of delivery channels over which electronic content is transmitted. The amended claims also expressly recite the relationship between a delivery channel and an outbound transmission flow rate, the latter being modified based on the recited analyzing steps. Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

The Claims Define Over The Cited References

As already noted, independent Claims 1, 11, and 14 were each rejected over d'Eon, in view of either AAPA or Rakoshitz, and further in view of a newly-cited reference, Schlack.

At page 9 of the Office Action it is explicitly noted that none of the previously cited references (d'Eon, AAPA, or Rakoshitz,) discloses the following features:

analyzing received consumer responses associated with each of said plurality of delivery channels used to transmit the electronic content and, based upon the received consumer responses analyzed, determining which of said plurality of delivery channels is more effective than each of the other of said plurality of delivery channels;

selectively redirecting at least a portion of the electronic content from other of said plurality of delivery channels to the delivery channel determined to be more effective; or

dynamically modifying said outbound transmission flow rate for said electronic campaign according to said determined effectiveness of the electronic campaign and said identified available network capacity.

It is asserted in the Office Action, however, that these same features are "fairly taught" by Schlack.

Schlack is directed to a system and method "for scheduling advertisements in a television service network environment." (Abstract; *see also* Col. 2, lines 48-52.) (Emphasis supplied.) Accordingly, Schlack only contemplates a *single* type of delivery channel, namely, television network broadcasts. When Schlack speaks to channels, it is to refer to different "programming channels:"

"In accordance with the present invention, a plurality of presentation stream groups are produced, each corresponding to a particular programming channel. A presentation stream group is composed of replicated presentation streams that are generated by "copying" one presentation stream corresponding to a particular programming channel. Thus, all the presentation streams in a presentation stream group have the same programming and the same avails at the same locations, into which different ads will be inserted in the different presentation streams. (Col. 53-62.) (Emphasis supplied.)

Elsewhere, Schlack explicitly describes each different channel being channels over which different television programs are carried. For example:

"In a DBS system, a programming stream comprising upwards of a hundred channels of television programming is delivered directly from a geo-stationary satellite transmitter 12 orbiting the earth to a receiving antenna 14 mounted on or near each subscriber's house and from the antenna via a cable to a satellite receiving station 15 in the subscriber's house 16.

* * * *

In a typical digital/analog cable network 20, multiple channels of television information are transmitted from a head end or central office 22 via a cable network 23. Particularly, the channels are transmitted via cables 24 to nodes 26. The nodes 26 are essentially switching/routing stations which service multiple homes (usually a few hundred).

* * * *

In accordance with a third type of system, namely, SDV system 30, television programming is transmitted over the regular telephone network.

In this system, each individual subscriber household may be addressable."

(Col. 4, line 22 – Col. 5, line 2.) (Emphasis supplied.)

As the quoted language reveals, each of the *alternative* systems described by Schlack, provide only one type of delivery: the delivery of television information or programs carried on alternative television broadcast channels. Although different programs are carried on different channels, *programming* channels are not distinct delivery channels. A programming channel is a specific channel over which a television program is provided; that is, it is a broadcast channel for delivering alternative television *programs*. Different programming channels, however, are not alternative delivery channels in the sense that, for example, a packet-switched channel is a different delivery channel from a circuit-switched delivery channel.

The distinction is perhaps most clearly illustrated in a portion cited in the Office Action:

For the purpose of explaining this process, FIG. 5 is provided which illustrates two exemplary presentation stream groups 61a and 61b. The first presentation stream group 61a is composed of replicated presentation streams (CC-1, CC-2 and CC-3) corresponding to "Comedy Central" or CC channel. The second presentation stream group 61b is composed of replicated presentation streams (MTV-1, MTV-2, MTV-3 and MTV-4) corresponding to "MTV" channel. Obviously, other presentation stream groups may exist. Also, it should be noted that all the presentation streams in each presentation stream group 61a, 61b have the same programming

and the same avails at the same locations as discussed hereinabove. For instance, each presentation stream in the first presentation stream group 61a has the same programs (e.g., Program 1, Program 2) and the same avails (e.g., Av1, Av2, Av3, Av4) at the same locations. (Col. 7, lines 31-48.) (Emphasis supplied.)

The Comedy Central channel may be a different *programming* channel than is the MTV channel, but they are not alternative delivery channels in the same sense that a packet-switched channel is distinct from a circuit-switched delivery channel, for example.

analyzing received consumer responses associated with each of said plurality of delivery channels used to transmit the electronic content and, based upon the received consumer responses analyzed, determining which of said plurality of delivery channels is more effective than each of the other of said plurality of delivery channels

Schlack is concerned with analyzing which programming channel – Comedy Central or MTV – is more effective. Nothing in Schlack suggests that Schlack even contemplates analyzing whether television broadcasts, as a specific delivery channel, is more or less effective than an alternative delivery channel, such as e-mail, telephonic delivery of advertisements, or some other physical delivery mechanism such as Web site advertising. Schlack looks only at one delivery channel, specifically, television broadcasts. Whether more viewers are watching Comedy Central than are watching MTV reveals nothing about whether some deliver channel that is an alternative to television broadcasts is more effective for advertising.

It follows that Schlack nowhere teaches or suggests analyzing received consumer responses associated with each of a plurality of delivery channels used to transmit the electronic content. It thus further follows that Schlack can not determine, based upon analyzed consumer responses, which of a plurality of delivery channels is more effective.

selectively redirecting at least a portion of the electronic content from other of said plurality of delivery channels to the delivery channel determined to be more effective

Because Schlack only looks at television programming, Schlack is incapable of redirecting electronic content from one delivery channel to a different delivery channel. Schlack redirects advertising from the Comedy Central *programming* channel to the MTV *programming* channel, but nothing suggests that Schlack is capable of redirecting advertising from, for example, from a packet-switched delivery channel to a circuit switched delivery channel.

dynamically modifying said outbound transmission flow rate for said electronic campaign according to said determined effectiveness of the electronic campaign and said identified available network capacity

Even more fundamentally, nothing in Schlack suggests that an outbound transmission flow rate is to be adjusted based upon a determined effectiveness. A determination that more viewers are receiving advertising because they are watching Comedy Central as opposed to MTV suggests anything about how an outbound transmission flow rate should be adjusted.

Accordingly, Schlack is wholly devoid of anything that remotely teaches or suggests those features found in the Office Action to be lacking in d'Eon, AAPA, and Rakoshitz. Applicants respectfully submit, therefore, that Claims 1, 11, and 14 each define over the prior art. Applicants further respectfully submit that, whereas each of the remaining claims depends from Claim 1, 11, or 14 while reciting additional features, each of the dependent claims likewise defines over the prior art.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the undersigned if clarification is needed on any matter within this Amendment, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

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